



An
Bord
Pleanála

Inspector's Report 06S NM0004

Development	Request for extension of time in relation to Statutory Instrument No. 596/2006 Railway (Kildare Route project) Order 2006.
Location	Kishogue Railway Station, Co. Dublin.
Planning Authority	South Dublin County Council, Dublin City Council and Kildare County Council.
Planning Authority Reg. Ref.	N/A.
Applicant(s)	CIE.
Type of Application	S.146B.
Planning Authority Decision	N/A.
Type of Appeal	N/A
Appellant(s)	N/A.
Observer(s)	N/A.
Date of Site Inspection	28/03/17.
Inspector	Philip Green.

1.0 Location and Description

1.1. Site adjacent to Kishogue railway station. The station structure itself has been built with locked access gates to that building complex from the adjoining road level and with the building surrounded by security fencing. The site of the car park is green field set at a significantly lower level to the adjoining road and footpath (Dublin Outer Ring Road - R136). This route appears to serve as a major link road with bus lanes, cycle routes and footpaths along sections of its length between the N4 to the north and N7 to the south and serving various large scale residential and commercial areas to the north and south of the site. This area of suburban western Dublin has been proposed for substantial development although in the immediate vicinity of the station itself undeveloped fields were still apparent. See photographs of the site and surrounds on previous file NM0003. The situation on the ground remains as shown on the photographs on that previous file.

2.0 Proposed alteration/requester's submission

- 2.1. CIE originally wrote in regard to this latest Request to the Board on 2nd February 2017 seeking an extension of time in relation to SI No. 596/2006 Railway (Kildare Route project) Order 2006. No details were provided in that letter other than a statement that Iarnrod Eireann wished to make an application under s. 146B of the Planning and Development Act 2000, as amended and stating that a copy of this Statutory Instrument and plan showing the proposed layout of the car park had been previously furnished.
- 2.2. Following a request from the Board dated 7th February 2017 for further information on the nature of this request a response from CIE was received on the 21st February 2017. This response included letter and attachments including Contract for Works Requirements for the station car park, proposed car park layout general arrangements (drawing no. 468 Rev A), and drawing (Structure Plan S017) of the car park layout authorised under the original Railway Order. The response also clarified the following:
- Period of time sought for extension is 2 years. This would enable associated work including completion of site surveys, ground investigations, detailed

design/tender preparation, procurement, construction, commissioning and hand over of car park to Ianrod Eireann.

- Nature of amendment remains as previously sought for opening of the station but subject to reduced parking provision pending growth in demand for parking;
- Circumstances and reasoning of interim reduced car parking provision at Kishogue as previously set out to Board. Previous comments (included) in regard to changed circumstances, legal issues, reduction in travel demand and economic situation and potential to expand car park as need arises still apply;
- All other railway works under the Order have been implemented.
- Board has powers to extend period of time for the construction of the car park and expiry of previous time period is not relevant (legal arguments submitted in response to query raised in Board's Further Information request);
- Terms of Railway Order provides that construction of works shall be completed within seven years or within such further period as the Board may allow on the application of the Railway Undertaking;
- Purpose of Kildare Route Project was to improve public transport services in the rail corridor including opening of new stations including Kishogue for which the car parking remains to be delivered.

3.0 Planning History

- **S.I. No. 596/2006 Railway (Kildare Route Project) Order 2006:** Copy of this S.I. is contained on the Board's previous file NM0003. The Order was made on the 5th December 2006 however having regard to the provision of S.43(4) of the Transport (Railway Infrastructure) Act 2001 the Order did not come into operation until the expiration of eight weeks. No copies of the Notices required pursuant to the provisions of S.43 are available on the file however

the Contract Document (Works Requirements) lodged with the current request indicates that the Order came into operation on the 29th January 2007 and was valid for seven years from that date.

- **06S. NM0003:** Request under S146B by CIE to extend time period as set out in Article 4(2) of the Kildare Route Project for a period of three years in order to construct a car park with approximately 106 spaces and necessary road infrastructure to service Kishogue Station. Board acceded to request and altered the Order so that the approval of the Project was extended for a period of three years for a smaller car park than that originally approved under the Order. The reduced parking provision pending the growth in demand for parking was not deemed by the Board to be a material alteration “taking into account current planning and development circumstances”. Having regard to the date that the original Order came into operation this Request extended the period of time to construct the car park to 28th January 2017.

4.0 **Legislative/procedural**

As noted in the report prepared in respect of previous file NM0003 the following legislative provisions apply to this case:

“The original Railway Order was made by the Minister of Transport in 2006 before the function of making such Orders was transferred to the Board under the provisions of s.49 of the Planning and Development (Strategic Infrastructure) Act, 2006 which amended the Transport (Railway Infrastructure) Act 2001. However Section 146D of the Planning and Development Act, 2000 (as amended) states that

Sections 146A to 146C shall apply to a railway order under the Transport (Railway Infrastructure) Act 2001 (whether made before or after the amendment of that Act by the Planning and Development (Strategic Infrastructure) Act 2006 as they apply to a permission, decision or approval referred in them with the following modifications:

(a) A reference in those sections to the terms of the development shall be construed as a reference to the terms of the railway works, the subject of the railway order;

(b) A reference in those sections to altering the terms of the development shall be construed as a reference to amending by order, the railway order with respect to the terms of the railway works, the subject of the railway order, and

(c) A reference in section 146A to submissions or observations made to the Board in relation to the permission or other matter concerned shall be construed as a reference to submissions made to the Minister for Transport or the Board, as the case may be, under the Transport (Railway Infrastructure) Act 2001 in relation to the railway order.

The applicant has therefore made the request under section 146B of the Planning and Development Act, 2000 (as amended)”.

S146B provisions

Under section 146B(2)(a) the Board shall as soon as practicable make a decision as to whether the making of the alteration would constitute the making of a material alteration of the terms of the development concerned. Per subsection 9, ‘term’ has the same meaning as it has in

s.146A, i.e. it includes a condition and in this case specifically the 'terms' of the railway works.

Under s.146B(2)(b), before making a decision under this subsection, the Board may invite submissions to be made by any person or class of persons as the Board considers appropriate and the Board shall have regard to any submission made on foot of the invitation.

Under s. 146B(3)(a) if the Board decide that the making of the alteration would not constitute the making of a material alteration it shall alter the permission or approval and notify the parties concerned

Under s. 146(3)(b) if the Board decide the making of the alteration would constitute a material alteration it shall determine whether to

- (a) Make the alteration
- (b) Make an alteration to the terms of the development concerned being an alteration to the one requested or
- (c) Refuse to make the alteration

Under s. 146B(4) before making a determination on the above the Board shall consider whether the alteration requested or the alternative alteration would be likely to have significant effects on the environment.

Under s. 146B(5) if the Board determines that the making of either kind of alteration is not likely to have significant effects on the environment it shall proceed to make a determination under subsection 3(b) or is likely to have significant effects the provisions of s. 146C shall apply. In a case to which s. 146C applies the Board shall require the person who

made the request under s. 146B to prepare an EIS in relation to the proposed alteration of the terms of the development concerned.

Under s. 146B(6) if the Board determines to make an alteration it shall alter the approval/permission and notify the parties accordingly.

Under s. 146B(7) in making a determination under subsection (4) the Board shall have regard to the criteria as set out in any regulations made under s. 176.

Under s. 146B(8)(a) before making a determination under subsection 3(b) or (4) the Board shall

(i) Make or require the requestor to make relevant information relating to the request for inspection;

(ii) Require the person who has made the request to invite submissions or observations. The Board shall have regard to any submission or observation made to it and notify any person who made a submission or observation in relation to the request.

5.0 **Assessment**

5.1. Notwithstanding my previous recommendation to the Board on case NM0003 I note its decision that the proposed revised layout and reduced size of the car park would not constitute a material alteration (06S NM0003 Order dated 6th June 2014). No significant new issues have been brought to my attention in regard to this specific matter to warrant a different decision being reached. I refer the Board also to my previous comments in regard to absence of significant effects on the environment not previously considered from the revised car parking layout.

5.2. **Appropriate Assessment:** Having regard to the nature and scale of development proposed and to the nature of the receiving environment, no appropriate assessment

issues arise and it is not considered that the proposed alteration would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

- 5.3. Having regard therefore to this previous Board decision which I consider to be a significant material consideration I conclude that the outstanding issue to be considered is therefore that of the request to extend the period of time for such works for an additional two years.
- 5.4. I draw the Board's attention to the Memorandum dated 1st March 2017 from the SAO (SIDS/LAPS). This states that 'my approach to the time period for construction of the works is that the Railway Order specified a time period under Article 4(2) and seeking an alteration under S146B of the 2000 Act should have been made as a request within that period of seven years or within the further period, the three year extension granted under 06S NM0003 and that, therefore, the current request under 06S NM0004 should not be considered'.
- 5.5. Whilst I note these comments I do not support them. The original consent for the railway and railway works were given by way of a Railway Order (the Railway (Kildare Route Project) Order 2006 which itself is a Statutory Instrument (No. 596 of 2006). As indicated in the requester's submission section 3 (1) of the Order indicates that the Principal Act (the Transport (Railway Infrastructure) Act 2001 as amended by the Railway Safety Act 2005 and the Order itself constitute a 'Special Act'. There are no time limits on the Statutory Instrument/Order itself which authorises not just the physical works of construction but also the execution and operation of the railway (and power to acquire land). Whilst there were time limits for periods in which the railway undertaking could compulsorily acquire land (seven years from Order coming into force – s. 15(1)) and of relevance in connection with this request the period in which construction works should take place (seven years from the date the Order comes into force or within such further period as the minister may allow – section 4(2)) these in my opinion are requirements specified or 'terms' of the Order. In this case even though the initial time periods for the entirety of the 'works' have been exceeded as set out in the original Order and as subsequently extended in NM0003 I consider that the request is valid and can be determined by the Board. Again no material changes in circumstances have been brought to my attention to justify withholding approval for a further two year extension of time to

permit the construction of the revised car park and I consider the reasons and considerations cited by the Board in its decision on NM0003 still to be pertinent.

6.0 Recommendation

I recommend that the Board conclude that the proposed alteration for a further extension of the time period as set out in Article 4(2) of the Kildare Route Project for a period of 2 years in order to construct a car park, with approximately 106 spaces, and necessary road infrastructure to service Kishogue Station would not result in a material alteration to the terms of the development, the subject of the Railway Order described as The Transport (Railway Infrastructure) Act 2001, (Kildare Route Project) Order 2006 in accordance with the following draft Order

REQUEST received by An Bord Pleanála on the 2nd February 2017 from Coras Iompair Eireann under section 146B of the Planning and Development Act, 2000, as amended, in respect of a Railway Order described as The Transport (Railway Infrastructure) Act 2001, (Kildare Route Project) Order 2006.

PROPOSED ALTERATION: Extension of the time period as set out in Article 4(2) of the Kildare Route Project for a further period of 2 years in order to construct a car park, with approximately 106 spaces, and necessary road infrastructure to service Kishogue Station.

Article 4(2) of the Order reads as follows:

“Construction of the works authorised by this Order shall be completed at the end of the period of 7 years from the date this Order comes into force or within such further period as the Minister may allow on the application of the Railway Undertaking.”

WHEREAS The Minister for Transport made a decision to make the above mentioned Railway Order by order dated the 5th day of December, 2006,

AND WHEREAS the Board has previously determined that a similar request for alterations to the Railway Order would not result in a material alteration to the terms of the development, the subject of the Railway Order (An Bord Pleanála reference 06S NM0003) and extended the time period for the construction of the works pursuant to the Railway Order for a period of three years in order to construct a car park with approximately 106 spaces and necessary road infrastructure to service Kishogue Station.

AND WHEREAS the Board has received a further request to alter the terms of the development, the subject of the Railway Order,

AND WHEREAS the Board considered that the proposed alteration would not result in a material alteration to the terms of the development, the subject of the Railway Order,

AND WHEREAS, having regard to the nature of the issues involved, the Board decided not to invite submissions in relation to the matter from persons who had made submissions or observations to the Minister for Transport in relation to the Railway Order,

NOW THEREFORE in accordance with section 146B(3)(a) of the Planning and Development Act, 2000, as amended, the Board hereby alters the abovementioned Railway Order so that the approval of the Kildare Route Project shall be extended for a further period of 2 years in order to construct a car park, with approximately 106 spaces, and necessary road infrastructure to service Kishogue

Station, in accordance with the plans and particulars received by An Bord Pleanála on the 2nd day of February, 2017 and 21st day of February 2017.

REASONS AND CONSIDERATIONS

Having regard to:

- (a) The purpose and objective of the Kildare Route Project, namely the improvement of public transport services in this rail corridor, including the opening of new stations.
- (b) The progress to date in implementing the Kildare Route Project, including a new station at Kishogue, for which the car-parking remains to be delivered.
- (c) The development context for the catchment area of Kishogue station, including the delays in implementing the comprehensive development vision for the site as set out in the Clonburriss Strategic Development Zone.
- (d) The scope of the subject proposal which will facilitate the opening of the Kishogue station and, thereby, contribute to fulfilling the objectives of the Kildare Route Project.
- (e) The amended layout proposed which will facilitate phased delivery of full parking capacity in tandem with demand, and the commitment of the applicant to pursuing this phased approach to capacity.
- (f) The previous Order issued by An Bord Pleanála under alterations request reference 06S NM0003 in respect of similar proposed alterations.

It is considered that the amendment sought, including time extension and reduced car-parking capacity, would not constitute a material alteration to the Railway Order.

Philip Green
Assistant Director of Planning

18th April 2017